

DATE OF MEETING FEBRUARY 25, 2019

AUTHORED BY DAVID LABERGE, MANAGER OF COMMUNITY SAFETY

SUBJECT “PARKS, RECREATION AND CULTURE REGULATION AMENDMENT BYLAW 2019 NO. 7073.07” AND “BYLAW NOTICE ENFORCEMENT AMENDMENT BYLAW 2018 NO. 7159.04”

OVERVIEW

Purpose of Report

To present for consideration amendments to the City of Nanaimo “Parks, Recreation and Culture Regulation Bylaw 2008 No. 7073” and “Bylaw Notice Enforcement Bylaw 2012 No. 7159” relating to taking overnight shelter in City parks, and other regulatory matters.

Recommendation

That:

1. “Parks, Recreation and Culture Regulation Amendment Bylaw 2019 No. 7073.07” (To allow for overnight shelter in City parks, and other regulatory matters) pass first reading;
2. “Parks, Recreation and culture Regulation Amendment Bylaw 2019 No. 7073.07” pass second reading;
3. “Parks, Recreation and culture Regulation Amendment Bylaw 2019 No. 7073.07” pass third reading;
4. “Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04” (To update enforcement penalty rates) pass first reading;
5. “Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04” pass second reading; and,
6. “Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04” pass third reading.

BACKGROUND

Homelessness and the use of public park space for overnight shelter is a pressing social issue in the community.

In *Abbotsford (City) v. Shantz*, 2015 BCSC 1909, the Supreme Court of British Columbia provides an analytical framework for municipalities to enact bylaws relating to the regulation of public spaces relating to the use of overnight shelters. Key points in this decision include:

- Allowing homeless to set up shelters overnight while taking them down during the day reasonably balances the needs of the homeless and the rights of other residents of the City.
- A minimally impairing response is to allow overnight shelters to be erected in public spaces between 7:00 p.m. and 9:00 a.m. the following day.

- The question of which public spaces the shelters should be permitted between these times is a legislative choice. Factors which should be considered include;
 - distinguishing developed and non-developed parks and public spaces;
 - taking into consideration the proximity to services for homeless individuals;
 - whether areas should be designated as environmentally sensitive;
 - ensuring individuals can sleep, rest, shelter, stay warm, eat, wash and attend to personal hygiene; and,
 - whether such areas may be occupied on a consistent or rotating basis after consideration of each unique area.

Proposed amendments to the City's "Parks, Recreation and Culture Regulation Bylaw 2008 No. 7073" are required to effectively regulate overnight shelter in parks and public spaces. Schedule 'D' identifies "Prohibited Parks and Parks Amenity Areas" where overnight shelter is not permitted. Areas not identified in Schedule D would be permissible locations for overnight shelter within City parks.

Parks with complete bans or restrictions around amenities have been chosen to reduce conflicts between potential campers and park users. Waterfront parks in the downtown and within the Nanaimo Harbour are deemed prohibited from overnight shelter. These parks are generally 'open-space' areas with heavy usage, tourism, public use and special events that take place at various times and hours of the year. Specific amenity areas in other parks (such as playgrounds and playfields) have minimum distances established to again reduce potential conflicts between campers and park users. There are other parks which have not been identified as prohibited, specifically Beban Park, Bowen Park, and Colliery Dam as they are broader parks that can balance the rights of all members of the community for usage and access. These parks have areas where individuals can have overnight shelter in reasonable privacy and away from the general movement of pedestrians, traffic and other users. They also provide closer access to facilities, including washrooms and showers, for those taking overnight shelter (one of the considerations put forth through case law). The proposed bylaw amendment seeks to reasonably balance the needs of the homeless and the rights of other residents of the City in a manner consistent to current case law.

The "Parks, Recreation and Culture Regulation Amendment Bylaw 2019 No. 7073.07" contains a number of other amendments, including provisions relating to the use of chainsaws in parks and general updating of definitions. These amendments are recommended to address potential public safety and health matters not previously contained in the bylaw.

OPTIONS

- A. That:
1. "Parks, Recreation and Culture Regulation Amendment Bylaw 2019 No. 7073.07" (To allow for overnight shelter in City parks, and other regulatory matters) pass first reading;

2. "Parks, Recreation and culture Regulation Amendment Bylaw 2019 No. 7073.07" pass second reading;
 3. "Parks, Recreation and culture Regulation Amendment Bylaw 2018 No. 7073.07" pass third reading;
 4. "Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04" (To update enforcement penalty rates) pass first reading;
 5. "Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04" pass second reading; and,
 6. "Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04" pass third reading.
- B. That Council provide alternative direction to Staff.

SUMMARY POINTS

- Proposed amendments to the City's "Parks, Recreation and Culture Regulation Bylaw 2008 No. 7073" provide legal authority to prohibit sheltering in developed park spaces.
- Homeless individuals without access to public shelters can take overnight shelter in public parks/areas not designated in Schedule D between 7 pm & 9 am.
- Temporary shelters must be taken down and removed after 9 am.
- Proposed amendments are required to manage and enforce the erection of temporary overnight shelter, and are consistent with case law.
- Prohibited areas in Schedule "D" have been identified to reduce potential conflicts between campers and other park users.
- Accompanying amendments to the "Bylaw Notice Enforcement Bylaw 2012 No. 7159" enable ticketing enforcement and dispute adjudication of the City's Parks Regulation Bylaw amendments.

ATTACHMENTS

Attachment A: "Bylaw Notice Parks, Recreation and Culture Regulation Bylaw 2008 No. 7073" Consolidated Version

Attachment B: "Bylaw Notice Parks, Recreation and Culture Regulation Amendment Bylaw 2019 No. 7073.07"

Attachment C: "Bylaw Notice Enforcement Amendment Bylaw 2019 No. 7159.04"

Submitted by:

David LaBerge
Manager of Community Safety

Concurrence by:

Richard Harding
Director of Parks and Recreation